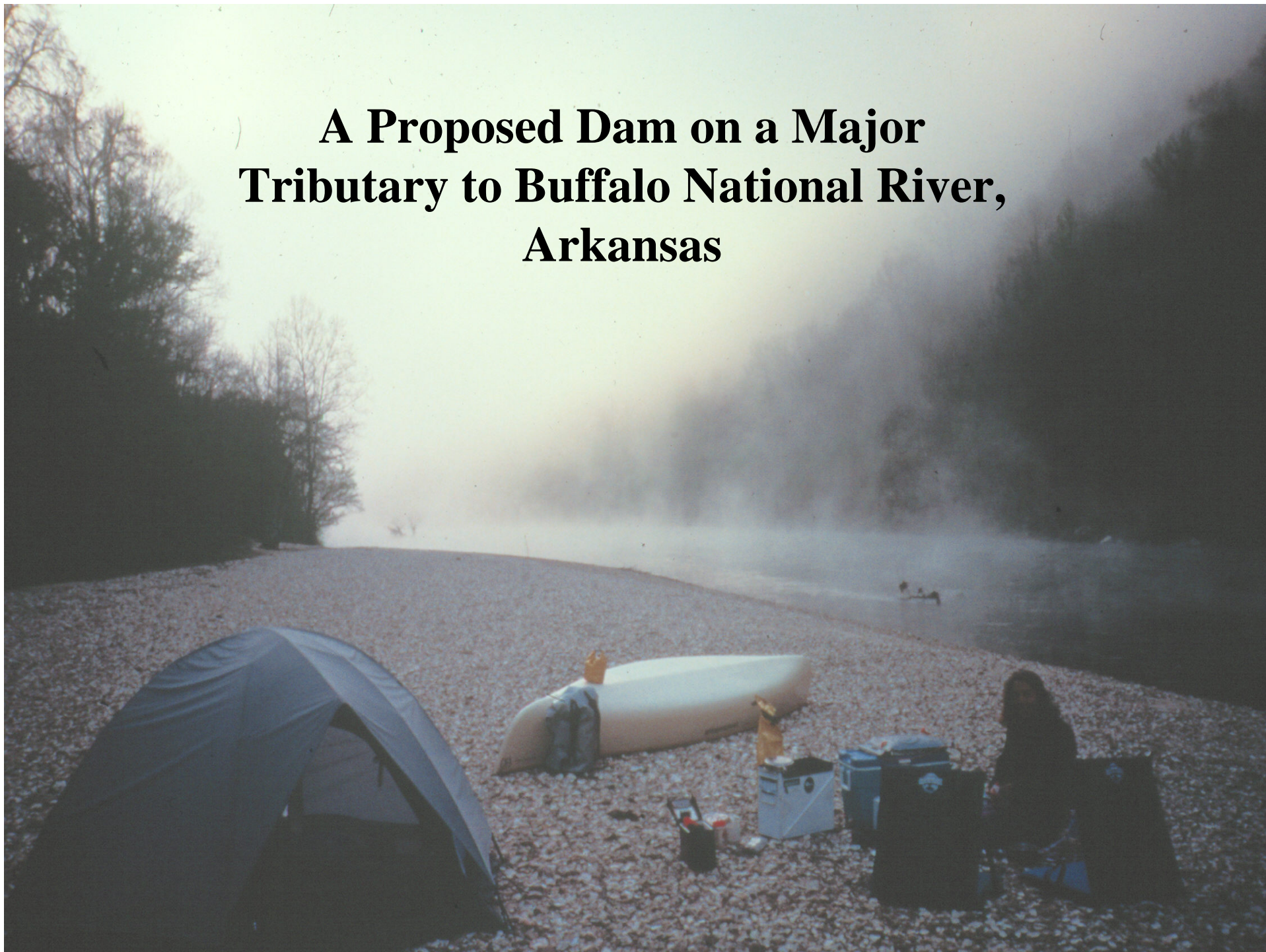
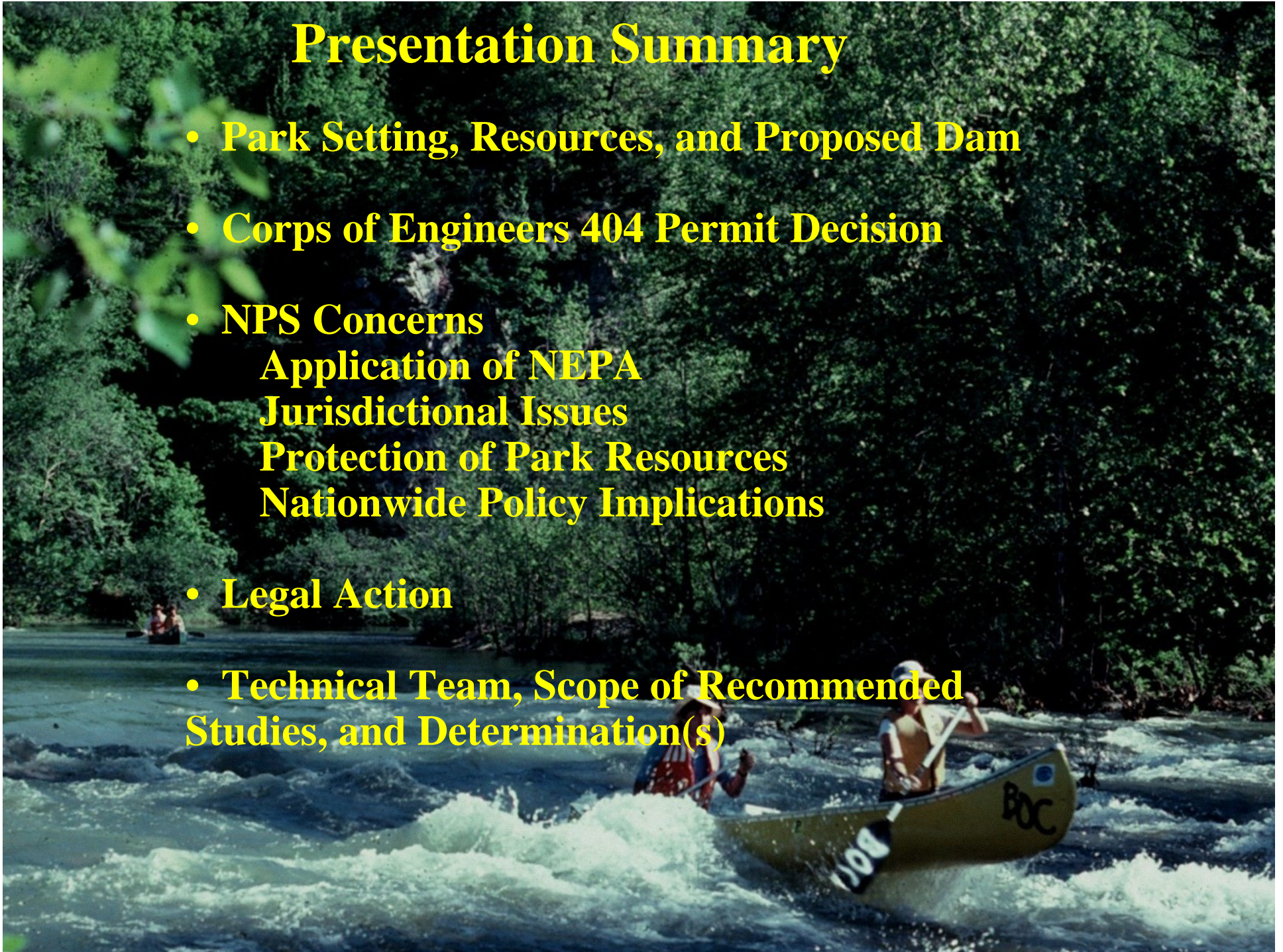


**A Proposed Dam on a Major
Tributary to Buffalo National River,
Arkansas**

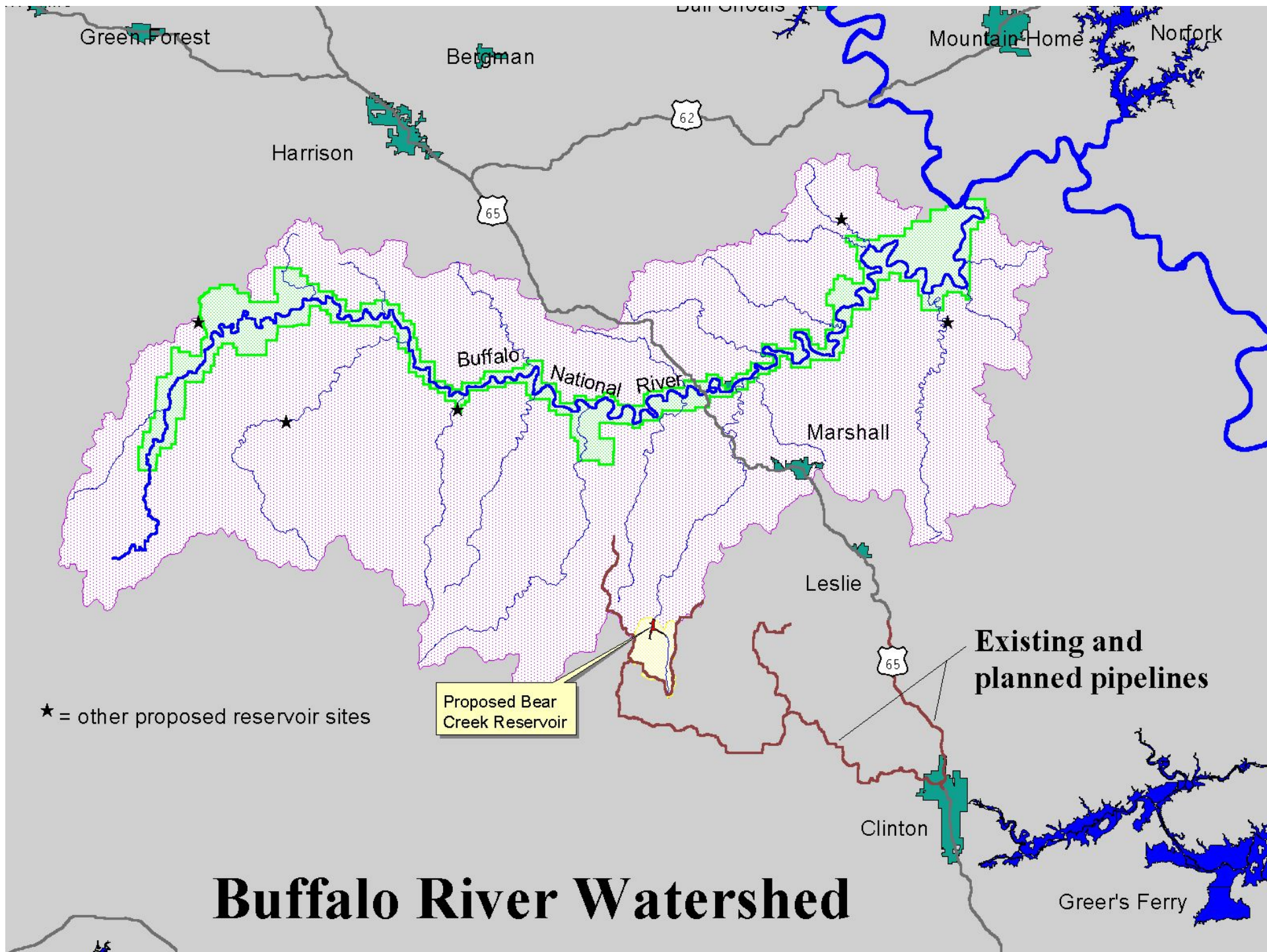


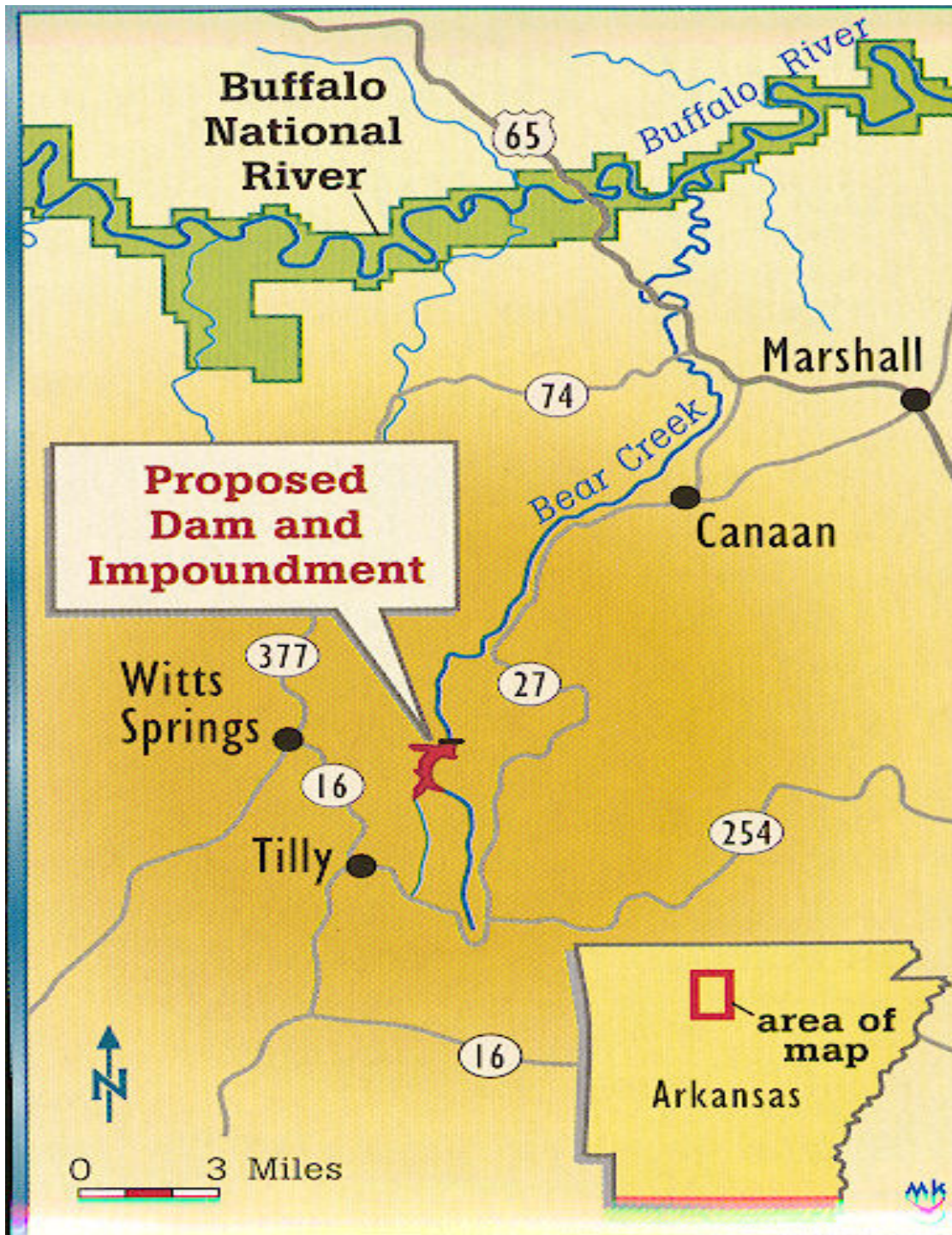
Presentation Summary

- Park Setting, Resources, and Proposed Dam
- Corps of Engineers 404 Permit Decision
- NPS Concerns
 - Application of NEPA
 - Jurisdictional Issues
 - Protection of Park Resources
 - Nationwide Policy Implications
- Legal Action
- Technical Team, Scope of Recommended Studies, and Determination(s)









Dam Facts

- About 25 river miles above the NPS boundary
- Earthen dam 107' tall creating approximately 100 acre reservoir
- Captures about 12% of Bear Creek watershed and 1.5% of the Buffalo River watershed
- Multi-purpose water supply with projected need of 3.7 million gal/day

NPS Resources at Risk of Being Unreasonably Diminished

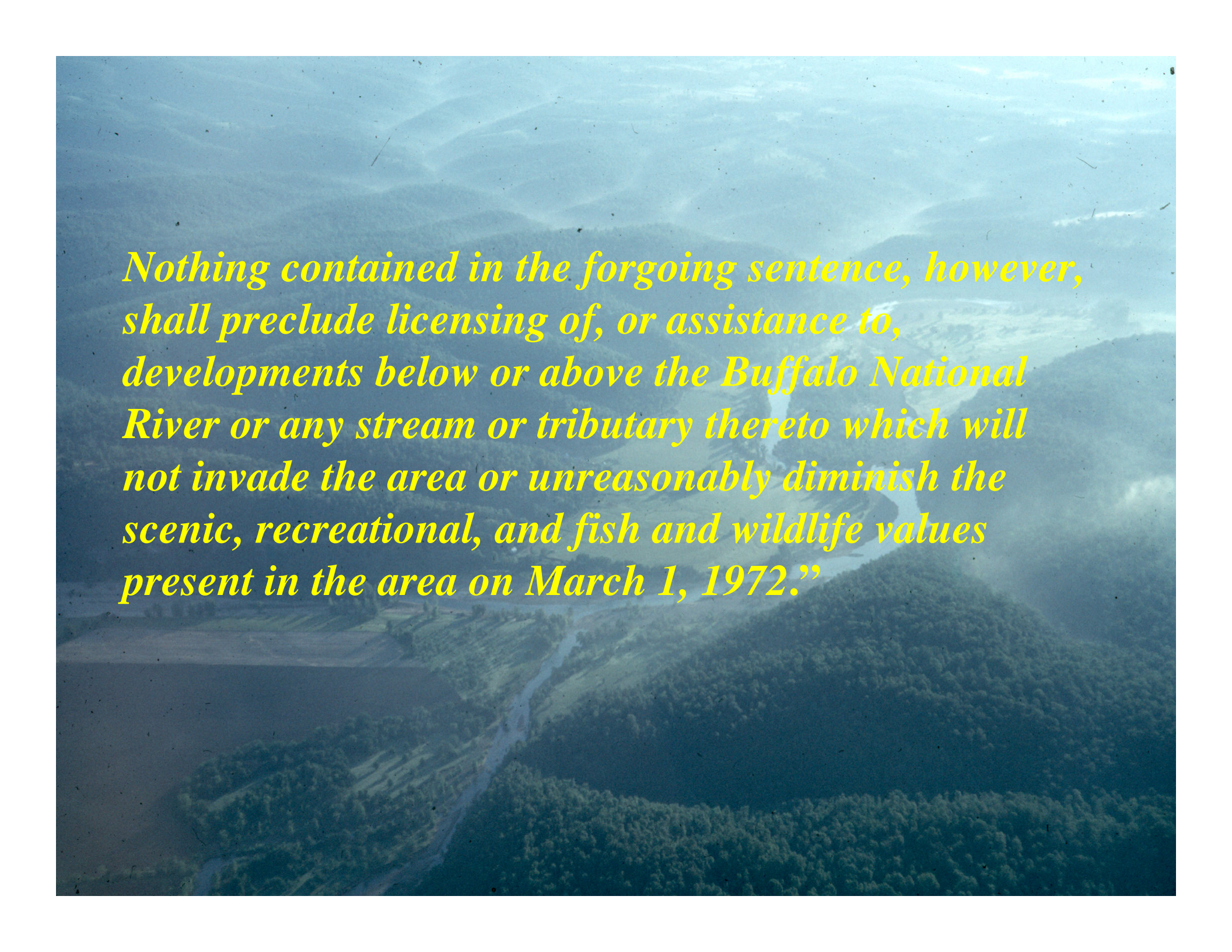


- **Natural Flow Patterns**
- **Water Quality**
- **Fish and Macroinvertebrates**
- **Sediment and Organic Matter Transport**
- **Riparian Communities**
- **Scenic, Recreational and Other Intrinsic Values**

An aerial photograph of a river, likely the Buffalo River, winding through a lush, green forested valley. In the background, there are rolling hills and mountains under a clear sky. The river is a light blue color, contrasting with the dark green of the trees.

The enabling legislation requires the NPS to “*preserve the Buffalo River as a free-flowing stream.*”

It states further that “...*no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resource project that would have a direct and adverse effect on the values for which such river is established, as determined by the Secretary.* [Language nearly identical to Section 7 of the Wild and Scenic Rivers Act.]

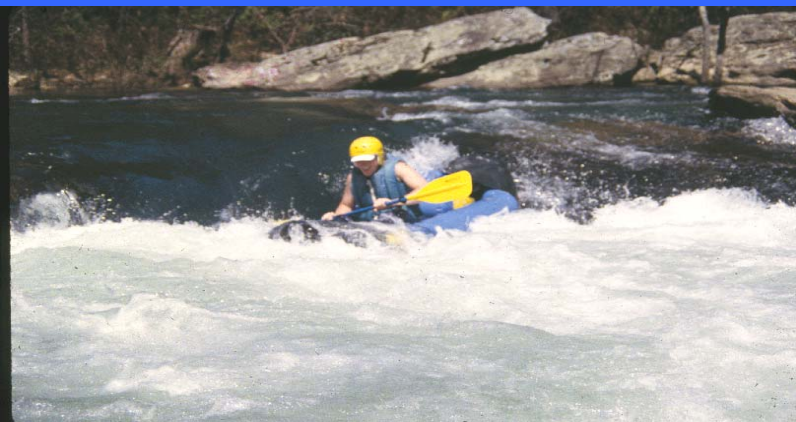
An aerial photograph of a river valley. The river flows from the upper right towards the lower left, winding through a lush green valley. The surrounding hills and mountains are covered in dense forest. In the background, more mountain ranges are visible under a hazy sky. The overall tone of the image is a deep teal or blue-green.

Nothing contained in the forgoing sentence, however, shall preclude licensing of, or assistance to, developments below or above the Buffalo National River or any stream or tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on March 1, 1972.”

U.S. Army Corps of Engineers (COE) 404 Permit

- **Construction of dam requires COE 404 permit**
- **COE prepared an Environmental Assessment**
- **NPS advised the COE that Secretary of the Interior must make determination of effect on river values and there was insufficient data to make such a determination**
- **COE responded that it would make the determination**
- **COE District denied permit citing presence of a less damaging alternative**
- **On appeal, COE Division issued 404 permit on August 3, 2001**
- **COE decided that the project would not unreasonably diminish Buffalo National River values**

NPS Concerns about COE Decision To Issue the 404 Permit



- Secretary of Interior, not the COE, should make the determination of effect on Buffalo National River
- EA should have been an EIS
- There was insufficient resource data to make the determination
- Appropriate expertise and science was not utilized
- An alternative known to be less damaging was available and was selected twice at the District level

National Implications

- **Buffalo National River language is similar to Section 7 of the Wild and Scenic Rivers Act**
- **Buffalo National River case will set precedent for:**
 - **2 other NPS National Rivers**
 - **34 NPS Wild and Scenic Rivers, including rivers in Big Bend, Glacier, and Yosemite National Parks**



Lawsuit

- On Oct. 24, 2001, eight environmental groups filed suit to vacate the COE 404 permit
- Plaintiffs argued COE violated Buffalo National River enabling act, as well as NEPA, Clean Water Act, and Administrative Procedures Act
- They argue that COE violated the enabling act by issuing the permit before the Interior Secretary made a determination about the effect on river values
- DOJ ultimately formulated a federal position on the issue, permit was withdrawn with COE telling applicant they would need to secure determination from NPS first.

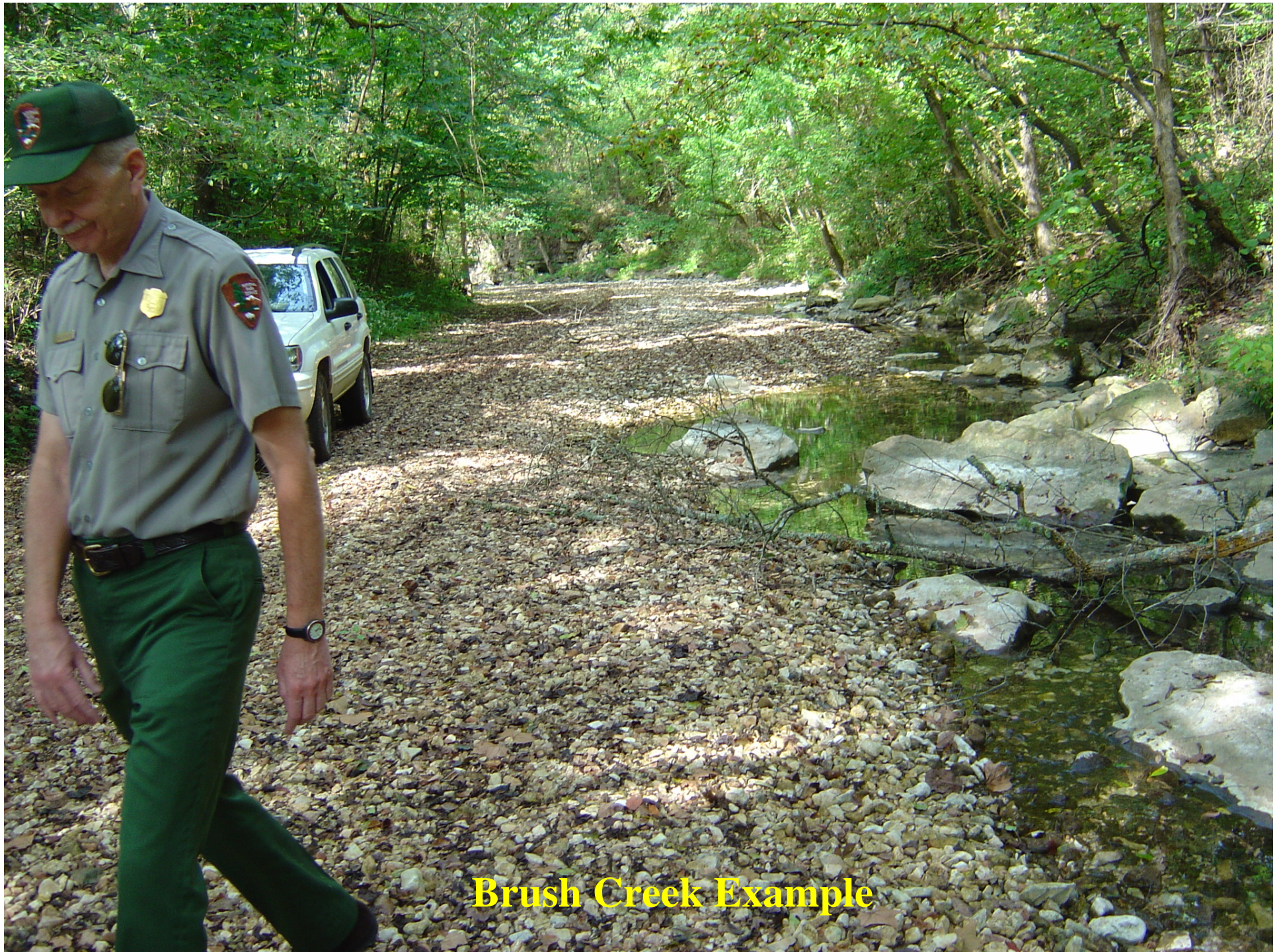
Technical Team

- **Comprised of: BUFF, SCRWD & Eng., COE, ASWCC, AGFC, NRCS, FWS, USGS, AGC, (elected reps. sometimes attend)**
- **Agenda Item 1: Develop Scope of Recommended Studies**
- **Applicant must secure funding for recommended studies**



•Bear Creek Example

Bear Creek near proposed dam site Nov. 5, 2002



Brush Creek Example

**Challenge: To provide guidance while
recognizing the uniqueness of individual cases.**

